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and Industrial Relations

## STATE OF HAWAII

### HAWAII LABOR RELATIONS BOARD

In the Matter of DIRECTOR,	) CASE NO. OSH 2011-5
DEPARTMENT OF LABOR AND	) (Inspection No. 313080368)
INDUSTRIAL RELATIONS,	)
	) STIPULATION AND SETTLEMENT
Complainant,	) AGREEMENT; EXHIBIT A; APPROVAL
	) AND ORDER
vs.	)
	)
HAWAIIAN DREDGING	)
CONSTRUCTION COMPANY, INC.,	)
	)
Respondent.	)

### STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations (“Director”) and Respondent HAWAIIAN DREDGING CONSTRUCTION COMPANY, INC. (“Respondent”) having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board (“Board”) stipulate and agree as follows:

On or about June 29, 2010, the Director, by and through the State of Hawaii’s Occupational Safety and Health Division (“HIOSH”), inspected Respondent’s workplace located at 92-1185 Aliinui Drive, Kapolei, Hawaii, 96707.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on December 28, 2010 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards, and assessed an aggregate penalty of \$15,000.00. *See* Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at 92-1185 Aliinui Drive, Kapolei, Hawaii, 96707.

3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

4. Respondent agrees that it has abated each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule ("HAR") § 12-51-22.

5. The Citation is amended as follows:

a. Citation 1, item 1, alleging a serious violation of section 12-110-2(b)(1)(B)(vi), HAR, and its attendant penalty of \$5,000.00, is withdrawn by HIOSH;

b. Citation 1, item 3, alleging a serious violation of section 12-110-2(f)(1)(A), HAR, and its attendant penalty of \$5,000.00, is withdrawn by HIOSH;

c. Citation 1, item 2, alleging a serious violation of section 12-110-2(b)(2)(B), HAR, is affirmed, and its attendant penalty of \$5,000.00 is reduced to \$3,000.00; and

d. The factual allegation forming the basis for citation 1, item 2, is amended to read: "While the employer did provide training and positive reinforcement to its employees and subcontractor employees to promote their understanding of safe work practices, it did not sufficiently hold two of its subcontractors accountable for repeated violations through its disciplinary system."

6. The Director reduces the aggregate penalty from \$15,000.00 to \$3,000.00 which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.

7. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

8. If Respondent fails to fulfill any condition of this Agreement within the time stated, Citation 1, Items 1 and 3, that were deleted along with their attendant penalties, shall be automatically and without further notice be reinstated and shall be final and conclusive and shall be treated as such with regard to any future citations the Director may issue against Respondent including, but not limited to, any "repeat" violations. All amounts shall be immediately due and owing. If Respondent fails to pay all penalties and the Director institutes legal action to collect on the outstanding amount due, Respondent agrees to pay all fees and costs, including reasonable attorney's fees, incurred to collect on the unpaid penalties. Any forbearance by the Director in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

9. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

10. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

11. Nothing in this Agreement shall bar the Director from taking any action


regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

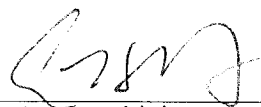
12. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.

DATED: Honolulu, Hawaii, May 2, 2011.

APPROVED AS TO FORM:


HAWAIIAN DREDGING CONSTRUCTION  
COMPANY, INC.

  
\_\_\_\_\_  
GARY M. YOKOYAMA  
Attorney for Respondent

By:   
\_\_\_\_\_  
Its U.P. Building Division

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND  
INDUSTRIAL RELATIONS

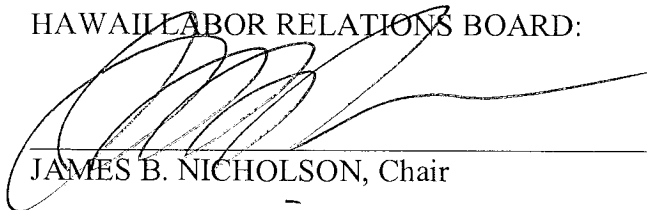
  
\_\_\_\_\_  
HERBERT B.K. LAU  
Deputy Attorney General  
Attorney for Director of Labor and  
Industrial Relations, State of Hawaii

  
\_\_\_\_\_  
DWIGHT TAKAMINE

APPROVED AND SO ORDERED BY  
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 431

DATED: May 2, 2011

  
\_\_\_\_\_  
JAMES B. NICHOLSON, Chair

  
\_\_\_\_\_  
SARAH R. HIRAKAMI, Member

  
\_\_\_\_\_  
NORMAN K. KATO II, Member

## State of Hawaii

Department of Labor and Industrial Relations  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
HONOLULU, HI 96813  
Phone: (808)586-9110 FAX: (808)586-9104



Certified Number: 7003 1680 0000 9997 4537

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## Citation and Notification of Penalty

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**To:**  
Hawaiian Dredging Construction Company Inc  
and its successors  
PO Box 4088  
Honolulu, HI 96812

**Inspection Number:** 313080368  
**Inspection Date(s):** 06/29/2010- 07/22/2010  
**Issuance Date:** 12/28/2010  
**OSHC ID:** F9171  
**Optional Report No.:** 02510  
**Inspection Type:** Unprogrammed Related  
**Scope of Inspection:** Comprehensive Inspection

**Inspection Site:**  
92-1185 Aliinui Dr  
Kapolei, HI 96707

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

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This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

**Posting** - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. **The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.**

**Informal Conference** - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

**Employers' Right to Contest** - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

**Penalty Payment** - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action** - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

**All abatement verification documents must contain the following information:** 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

**Employer Rights and Responsibilities** - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

**Employees' Right to Contest** - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

**Inspection Activity Data** - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at [WWW.OSHA.GOV](http://WWW.OSHA.GOV). If you have any dispute with the accuracy of the information displayed, please contact this office.

## ABATEMENT CERTIFICATION

DWIGHT Y. TAKAMINE, DIRECTOR  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
HONOLULU, HI 96813

Hawaiian Dredging Construction Company Inc  
PO Box 4088  
Honolulu, HI 96812

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

I attest that the information contained in this document is accurate and that the affected employees and their  
representatives have been informed of the abatement activities described in this certification.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name



**State of Hawaii**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division



**NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE**

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 12/28/2010. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on \_\_\_\_\_ at \_\_\_\_\_.

Employees and/or representatives of employees have a right to attend an informal conference.

**State of Hawaii**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety And Health Division

**Inspection Number:** 313080368

**Inspection Dates:** 06/29/2010-07/22/2010

**Issuance Date:** 12/28/2010



**Citation and Notification of Penalty**

**Company Name:** Hawaiian Dredging Construction Company Inc

**Inspection Site:** 92-1185 Aliinui Dr, Kapolei, HI 96707

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**Citation 1 Item 1** Type of Violation: **Serious**

HAR §12-110-2(b)(1)(B)(vi) was violated because:

The employer was not holding their management accountable regarding their responsibility to ensure their employees and subcontractor employees control or eliminate any hazards(s) or other exposure to injuries or illnesses at their jobsite.

Management was not holding their employees and subcontractor employees accountable in their work activities to control or eliminate any hazard(s) or other exposure to injuries or illness at their jobsite.

§12-110-2(b)(1)(B)(vi) states Provide a system to hold managers, supervisors, and employees accountable for their responsibilities under the safety and health program.

Location: Aulani Disney Resort & Spa in Ko Olina

Date By Which Violation Must be Abated:

01/03/2011

Penalty:

\$ 5,000.00

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See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



### Citation and Notification of Penalty

Company Name: Hawaiian Dredging Construction Company Inc  
Inspection Site: 92-1185 Aliinui Dr, Kapolei, HI 96707

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#### Citation 1 Item 2 Type of Violation: **Serious**

HAR §12-110-2(b)(2)(B) was violated because:

The employer did not enforce its progressive disciplinary policy for employees who do not comply with the company's written safety policy. The progressive disciplinary system would deter employees from repeatedly breaking the company's own safety rules as stated in their written safety and health manual.

§12-110-2(b)(2)(B) states "The employer shall ensure that practices are understood by all employees and are underscored through training, positive reinforcement, correction of unsafe performance, and, if necessary, through a clearly defined and communicated disciplinary system."

Location: Aulani Disney Resort & Spa in Ko Olina

Date By Which Violation Must be Abated:	01/03/2011
Penalty:	\$ 5,000.00

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See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii  
Department of Labor and Industrial Relations  
Hawaii Occupational Safety And Health Division

Inspection Number: 313080368  
Inspection Dates: 06/29/2010 - 07/22/2010  
Issuance Date: 12/28/2010



### Citation and Notification of Penalty

Company Name: Hawaiian Dredging Construction Company Inc  
Inspection Site: 92-1185 Aliinui Dr, Kapolei, HI 96707

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#### Citation 1 Item 3 Type of Violation: **Serious**

HAR §12-110-2(f)(1)(A) was violated because:

Health and safety responsibilities of the prime contractor were passed on to the sub-contractor. The prime contractor allowed sub-contractor employees to work on a scissors lift without first receiving training, damaged electrical wiring was being used, and scaffolds were not inspected prior to use before each shift, thus exposing employees to serious hazards.

§12-110-2(f)(1)(A) states "Where one contractor is selected to execute the work of a project, that contractor shall ensure compliance with the requirements of the standards of part 3 of this title from the contractor's own employees as well as from all sub-contractor's own employees as well as from all subcontractor employees on the project."

Location: Aulani Disney Resort & Spa in Ko Olina

Date By Which Violation Must be Abated:	01/03/2011
Penalty:	\$ 5,000.00

  
\_\_\_\_\_  
DWIGHT TAKAMINE  
Director

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See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.